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SUBJECT: INVESTMENT CLIMATE STATEMENT FOR THE BAHAMAS 2006

REF: SECSTATE 202943

[1](#). THE FOLLOWING IS PROVIDED IN RESPONSE TO REFTEL.

#### INVESTMENT CLIMATE

##### A.1. Openness to Foreign Investment

The Bahamian Government generally encourages and offers incentives for foreign investment in all sectors of the economy except those the Government reserves exclusively to Bahamian citizens. Reserved businesses include: wholesale and retail operations; commission agencies engaged in the import/export trade; real estate and domestic property management agencies; domestic newspaper and magazine publication; domestic advertising and public relations firms; nightclubs and restaurants (except specialty, gourmet and ethnic restaurants and restaurants operating in a hotel, resort complex or tourist attraction); security services; domestic distribution and building supplies; construction companies (except for special structures for which international expertise is required); personal cosmetics/beauty establishments; shallow water scalefish; crustacean, mollusk and sponge fishing operations; auto and appliance service operations; and public transportation.

Officially, the Government has targeted the following categories of businesses for foreign investors: tourist resorts; upscale condominiums; time share and second home development; international business centers; marinas; information and data processing services; assembly industries; high-tech service; ship registration, repair and other services; light manufacturing for export; agro-industries; food processing; mariculture; banking and other financial services; captive insurance companies; aircraft services; pharmaceutical manufacture; and offshore medical centers.

Benefits of investing in The Bahamas include: a stable, democratic government; relief from corporate and personal income taxes; timely repatriation of profits of approved investments; proximity to the United States; extensive air links through nearby Miami, Ft. Lauderdale and Orlando; well-developed telecommunications links; a good pool of skilled professionals; excellent tourism and conference facilities; and tariff concessions under the Caribbean Basin Economic Recovery Act, Canada's CARIBCAN Program, and the European Union's LOME IV Agreement. The Bahamian dollar is fixed on par with the United States dollar and the Government is firmly committed to maintaining this exchange rate.

In practice, the vast majority of successful foreign investments in The Bahamas have been in the traditional areas of tourism and banking. The decision-making process within the Government of The Bahamas is highly centralized and major investments are subject to review and approval at the cabinet level. The Government is most interested in investments that will generate local employment, particularly in white-collar or skilled jobs. Large-scale projects in areas such as agriculture may be difficult to staff since low-wage and low-skill jobs do not appeal to most Bahamians, and because the Government is reluctant to permit importation of foreign laborers to staff these jobs, even on a temporary-permit basis. When new foreign ventures are perceived as competitors to existing Bahamian businesses or too dependent on foreign labor, the Government has responded to local concerns and withdrawn or refused the license of the foreign business.

In 1993, the Government established The Bahamas Investment Authority (BIA). It is located in the Ministry of Financial Services and Investments. BIA is intended to provide a "one-stop-shop" to assist foreign investors with initial governmental approval of their investment applications and to cut through further red tape for approved investments. BIA is the Government's central point of contact for foreign investment questions. Potential investors may contact the BIA at:

Bahamas Investment Authority

P.O. Box N-7770  
Nassau, Bahamas  
Tel: 1-242-356-5956, Fax: 1-242-327-5907  
www.opm.gob.bs

While The Bahamas has not yet enacted environmental legislation as extensively as that in the United States, the BIA still requires a full accounting of the environmental impact of any industrial or agricultural schemes.

#### A.2. Conversion and Transfer Policies

Persons and corporations resident in The Bahamas are subject to exchange controls administered by the Central Bank. Certain commercial banks are authorized to deal in foreign currency and have authority delegated by the Central Bank to approve exchanges for certain current account transactions. Non-resident investors wishing to initiate operations in The Bahamas must register their operations with the Central Bank. If their projects are financed substantially by foreign currency transferred into The Bahamas, they will be given "approved status," meaning that profits and capital gains can be converted into foreign currency and repatriated with minimal formalities. Capital investment into The Bahamas remains subject to exchange controls, but as a practical matter these controls have not been known to inhibit repatriation of approved investment capital. Many Bahamians argue that exchange controls should be eliminated, but the Central Bank and the Government are not prepared to do so at this time, citing the need to retain sufficient foreign reserves to mount a strong defense of the currency's one-to-one parity with the U.S. dollar.

#### A.3. Expropriation and Compensation

Article 27 of the Bahamian Constitution prohibits deprivation of property except upon the making of prompt and adequate compensation in the circumstances. There is no evidence that the Government has ever expropriated a business, and both major political parties have stated that nationalization will not be an instrument of Government policy.

#### A.4. Dispute Settlement

There is no history of major investment disputes in The Bahamas, although smaller contractual and other disputes between Bahamians and foreign investors or exporters are not uncommon. The Bahamian legal system is based on English common law. The judiciary, appointed by the Governor General, is independent and there is no evidence of Governmental interference with the system. The highest court of appeal is the Privy Council in London.

Tentative consideration is being given to the creation of a Caribbean Final Court of Appeals to replace the Privy Council. Despite recent efforts to reduce backlogs of criminal and civil cases, resolution of court cases can be slow, sometimes taking years. The Embassy has received some reports of encounters with biased judges and malfeasance by attorneys. The Embassy has also received reports of local defendants evading payment of Bahamian civil judgments or deliberately dragging out court disputes, especially in cases involving non-resident plaintiffs.

Judgments of British courts, and of selected commonwealth countries, can be registered and enforced. Other countries' judgments, including those of the United States, must be sued upon in court as debt, subject to all jurisdictional requirements. Judgments of Bahamian courts are payable in Bahamian dollars unless otherwise specified by agreement of the parties.

Personal bankruptcy laws are antiquated and rarely used. Companies can be and are frequently liquidated according to law. Creditors of bankrupt debtors and liquidated companies participate in the distribution of the bankrupt debtor's or liquidated company's estate according to statute. The law relating to sales of goods and some other commercial subjects are codified in The Bahamas' statutes.

The Bahamas has been a member of the International Center for the Settlement of Investment Disputes (ICSID) since 1995. It is also a member of the Multilateral Investment Guarantee Agency, which insures investors against currency transfer restrictions, expropriation, war and civil disturbances, and breach of contract by member countries.

#### A.5. Performance Requirements/Incentives

The Bahamas lacks any form of taxation on income, sales, estates or inheritances. The only direct tax is a real property tax. Casinos are specially taxed, and there is a \$15 departure tax levied at the airports and harbors. The principal incentives for foreign investments are concessions on import duties and property tax abatement. Tariffs in general are high but do not generally discriminate by country of origin. Incentives are offered under the following legislation:

-- Industries Encouragement Act: Under this law, the Government may exempt from duties the machinery, tools, equipment, and raw materials imported to construct new factories. A list of duty-exempt items is negotiated separately with each new venture.

-- Hotels Encouragement Act: Under this law, new hotels and resorts can be exempted from real property taxes for ten years from the date the new facility opens, and for significant tax reduction for up to ten additional years. An amendment to the Act currently before Parliament would allow the Government to grant tax relief for an additional ten years, raising the maximum length of tax abatement to thirty years. In addition, the Act allows the duty-free importation of materials used for the construction of new facilities or the substantial renovation of existing facilities acquired by new owners for a set period of time. The list of duty-free items for each project and the duration of some duty-free windows are negotiated separately for each venture.

-- Agricultural Manufacturers Act: This law allows any materials necessary for the construction, alteration, or repair of an agricultural factory, as well as any machinery or supplies used in establishing such a factory, to be imported duty free. An agricultural factory refers to any factory established for the purpose of manufacturing or preparing agricultural or horticultural produce of The Bahamas for sale or export.

-- Spirits and Beer Manufacturers Act: This law provides for the duty-free importation of materials used in the construction, alteration or repair of approved liquor distilleries or beer breweries and the duty-free importation of raw materials and equipment for liquor or beer production.

-- Recent amendments to the Tariff Act provide duty exemptions for construction and development on certain outer "Family Islands."

Prospective investors should discuss the terms and conditions under which these benefits will be made available in any specific case with The Bahamas Investment Authority. Although work permits for key foreign employees are readily granted in connection with the investment approval process, Government policy favors employment of Bahamians. Fees for work permits can run up to several thousand dollars each, and permits for less senior employees can be difficult to obtain.

#### A.6. Right to Private Ownership and Establishment

Subject to the reservation of certain areas of economic activity to Bahamian citizens only, and the necessary approvals and licenses, private entities may engage in nearly all forms of remunerative activity. They may freely establish, acquire, and dispose of interests in business enterprises. One significant exception is the Government's monopoly on all forms of telecommunications (except Internet services, wireless services, paging, and radio) exercised by The Bahamas Telecommunications Company (BTC). Government corporations compete on a basis of rough equality with private corporations in similar businesses.

#### A.7. Protection of Property Rights

Subject to long legal delays, secured interest in property, both chattel and real, is recognized and enforced. Mortgages in real property and security interests in personal property can be recorded with the Registrar General.

The Bahamas is a member of the World Intellectual Property Organization (WIPO), but not of the World Trade Organization (WTO). There is little industrial production that might generate possible infringements of patent rights. However, existing copyright laws are widely ignored, resulting in widespread piracy of video and music recordings and broadcasts, most of which remain in The Bahamas.

A.8. Transparency of the Regulatory System  
Official Government policy commits The Bahamas to building an economic environment where the Government assumes its proper role as regulator and facilitator of economic development, and where ideals of transparency, fair play and equality of treatment are protected. Still, the discretionary issuance of business licenses can result in a lack of transparency in decisions to authorize or to renew the authority of a business. Large foreign investors may be held to higher labor, health and safety standards than are local entrepreneurs. Obtaining required permits, especially immigration permits, can take an inordinate length of time. The Bahamas Investment Authority exists to assist foreign investors in dealing with the permitting process.

#### A.9. Efficient Capital Markets and Portfolio Investment

The Bahamas International Securities Exchange (BISX) offers shares on the domestic market. BISX has been plagued with a

shortage of funds and low trading volume since its inception in 2000. However, the improvement in the economy in 2004 contributed to an increase in investor confidence and activity in the domestic capital markets. The volume of securities traded on BISX nearly doubled to 8 million shares during 2004, with the value significantly higher at \$24.3 million from \$7.5 million in 2003. The BISX All Share Price Index appreciated by 19.7% to 1,039.4 points, a marked rebound from the narrowed decline of 2.0% in 2003. Similarly, valuations represented in the broader Fidelity Capital Market Index (Findex), which captures over-the-counter trading, recovered by 14.9% to 423 points, from a loss of 0.6% in the previous year. Total market capitalization on BISX rose by 17.2% to \$1.9 billion, and was inclusive of the Kerzner International Bahamian Dollar Depository Receipts (BDRS) sold to the public during July 2004.

A number of important initiatives are being considered to accelerate the development of the local capital markets. One of these is the eventual inclusion of Government debt securities among instruments issued and openly traded in the capital markets, provided that this does not increase the cost of Government debt financing, and this would establish a benchmark for the pricing and issuance of private debt securities. Consideration is also being given to measures to ensure the self-sustaining operating viability of BISX. Finally, consideration is being given to the further gradual liberalization of Exchange Controls, including those on certain portfolio investments. On January 16, 2006 the Minister of Finance, James Smith, announced "the relaxation of certain capital account restriction," that now makes it easier for Bahamians to invest money abroad.

Local bank credit, including loans from The Bahamas Development Bank, is available to resident enterprises for capital investment in The Bahamas in proportion to their local ownership.

The prime rate at the end of November 2005 declined from 6.00% to 5.50%. The majority of outstanding commercial bank credit is personal loans (mortgages) for consumer purchases. According to data from the Central Bank, the number of U.S. bank and trust companies has declined from 41 in 2003 to 15 in September 2005. At the end of June 2005, the total external assets and total external liabilities of these banks amounted to approximately \$229,082 million and \$227,327 million respectively. The gross economic contribution of the banking sector for 2004 to the Bahamian economy was \$463.1 million. Since the passage of the new financial legislation, the total number of banks and trust companies declined from 415 in 1999 to 253 as of September 2005 -- most of these banks were "brass plate" banks (organizations that were registered in The Bahamas but did not have a physical presence in this jurisdiction). In addition, the number of International Business Companies (IBCs) has rebounded after falling-off to around 80,000 in 2003, after implementation of new bank regulation in 2000, to 135,595 at the end of 2004. Assuming continued growth and steady or declining unemployment, there is at this time no reason to doubt the soundness of the banking system in general. Projects in The Bahamas are also eligible, in some instances, for financing from the U.S. Export-Import Bank, the Overseas Private Investment Corporation (OPIC), or from multilateral institutions such as the Inter-American Development Bank (IDB). Major Bahamian banking institutions, which can provide financing for certain projects in The Bahamas include:

Bahamas Development Bank  
P.O. Box N-3034  
Nassau, Bahamas  
Tel: (242) 352-5780

Bank of The Bahamas, Ltd.  
P.O. Box N-7118  
Nassau Bahamas  
Tel: (242) 326-2560

First Caribbean International Bank (merger between Barclays Bank and the Canadian Imperial Bank of Commerce (CIBC)  
Charlotte House  
P.O. Box N-3221  
Nassau, Bahamas  
Tel: (242) 325-7384

British-American Bank  
P.O. Box N-7502  
Nassau, Bahamas  
Tel: (242) 327-5170

Commonwealth Bank  
P.O. Box SS-6263  
Nassau, Bahamas  
Tel.: (242) 328-1854

Royal Bank of Canada  
P.O. Box N-7537  
Nassau, Bahamas  
Tel: (242) 322-8700

Bank of Nova Scotia  
P.O. Box N-7518  
Nassau, Bahamas  
Tel: (242) 356-1400

Finance Corp. Of The Bahamas  
P.O. Box N-3038  
Nassau, Bahamas  
Tel: (242) 322-4822

#### A.10. Political Violence

The Bahamas has no history of political violence. The Government publicly and strongly supports a modern open approach to foreign investment, although many Bahamians, including some prominent politicians, remain suspicious of expatriate investors and employees. Foreign investors are sometimes the targets of criticism in the news media and Parliament.

#### A.11.A Corruption

Giving a bribe to -- or accepting bribes from -- a Government official is a criminal act in The Bahamas. The current PLP Government, cognizant of scandals in the 1980s that helped bring down the previous PLP government in 1992, has emphasized anti-corruption measures and has recently introduced code of conduct guidelines for members of parliament. Since 1992, credible reports of heavy corruption have become rare, although allegations of improper conduct on the part of Government officials surface regularly, and were a prominent feature of the 2002 election.

#### B. Bilateral Investment Agreements

There is no Bilateral Investment Treaty between The Bahamas and the United States. The Bahamas was designated a beneficiary of the Caribbean Basin Initiative (CBI) in 1985. As a result, with certain restrictions, products manufactured in The Bahamas qualify for duty-free entry into the United States. High wage rates, combined with the small size of the country's manufacturing and agricultural sectors, have hindered The Bahamas' ability to exploit these benefits. On January 25, 2002 the former FNM Government signed a Tax Information Exchange Agreement (TIEA). A key side benefit of this agreement for The Bahamas is that, effective January 1, 2006, it permits U.S. tax deductions for expenses of business conventions held in The Bahamas.

#### C. OPIC and Other Investment Insurance Programs

Since 1992, the U.S. Overseas Private Investment Corporation (OPIC) has approved two investment projects in The Bahamas. It guaranteed up to \$10.8 million in loans to Uniroyal Chemical Company, Ltd. to assist in the purchase and refurbishment of a plant in Freeport. The Uniroyal plant has since closed. In addition, OPIC committed itself to a loan of up to \$1.6 million to Landquest, Ltd., for the development of a cruise ship facility on the island of Eleuthera.

The Bahamas is also associated with the Multilateral Investment Guarantee Agency of the World Bank, which, like OPIC, insures investors against currency transfer restrictions, expropriation, war, civil disturbances and breach of contract by member countries.

#### D. Labor

In 2004 the labor force consisted of 178,705 workers. The Government and the tourism industry are the country's largest employers. According to the Department of Statistics, the unemployment rate at the end of 2005 remained unchanged from the 10.2% rate at the end of 2004, although the statistics mask considerable under-employment. Unemployment is slightly higher for women and highest among youth. Unemployment outside Nassau and Freeport tends to be higher than in the two major population centers. Wage rates, while lower than in the United States, tend to be higher than elsewhere in the Caribbean. Well-qualified accountants and secretaries, and others with skills appropriate to the financial services industry, command a premium wage.

The minimum wage is \$4.45 per hour for public sector employees. Minimum wage for private sector workers is \$4 per hour. The Fair Labor Standards Act requires at least one 24-hour rest period per week, paid annual vacations, and employer contributions to National Insurance (social security). The Act also requires overtime pay (time and a half) for hours in excess of 48 or on public holidays. A 1988 law provides for maternity leave and the right to re-employment after childbirth. A Minimum Labor Standards Act

including the Employment Act, Health and Safety at Work Act, Industrial Tribunal and Trade Disputes Act, and the Trade Union and Labor Relations Act were passed in 2001 and early 2002.

The Bahamian Constitution specifically grants labor unions the rights of free assembly and association. These rights are exercised extensively, particularly in the hotel industry - where 80 percent of the employees are unionized - and in the state-owned industries. Unions operate without restrictions or Government controls. The right to strike is governed under the Industrial Relations Act, which requires a simple majority of union members to vote in favor of a strike before it can commence. The Ministry of Labor oversees strike votes. Although prolonged strikes are still rare, work slow-downs and rowdy protests occur occasionally. Labor unions and others involved in disputes with foreign-owned enterprises have not been above using the fact of foreign ownership as a lever to gain popular support for their demands.

The Immigration Act requires foreigners to obtain work permits before they can be employed in The Bahamas. The Government will permit foreign employees to work in a technical, supervisory or managerial capacity to initiate and operate industries, provided no similarly qualified Bahamians are available for the job. Foreign business owners are expected to train as many of their Bahamian employees as possible to eventually fill technical and managerial positions. Work permit fees have been increased from a range of \$250 to \$7,500 per year to \$350 to \$10,000 per year.

#### E. Foreign Trade Zones/Free Ports

The 1955 Hawksbill Creek Agreement established Freeport, Grand Bahama, the country's second-largest city, as a free trade zone. Firms in Freeport are granted the right to import equipment and materials duty-free, and enjoy other tax advantages. In 1993, the Government extended the Hawksbill Creek property tax exemptions through 2015 and duty exemptions to 2054, but withdrew real property tax exemptions for foreign individuals and corporations. The Hong Kong-based conglomerate Hutchison Whampoa has invested millions of dollars in a new deep-water container port, airport, cruise ship dock, industrial park, and hotel properties in Freeport.

#### F. Foreign Direct Investment Statistics and Major Foreign Investments

There is also a direct link between the level of imports flowing into The Bahamas and foreign direct investments. At the end of September 2005, net private direct investment was \$139.7 million, and net private direct equity investment was 72.6 million. Net Foreign Loan Financing on foreign investments was (\$5.2) million. Net foreign real estate purchases for this period totaled \$67.1 million. While Government statistics do not list overall foreign investment by nationality, the largest investors are American, Canadian, Hong-Kong Chinese, and South African in origin.

Major foreign investments in The Bahamas include:

- Atlantis, a hotel, resort, and casino complex on Paradise Island near Nassau owned by Sol Kerzner of the South African firm Sun Hotels International;
- Baha Mar Resorts Ltd, owned by an Armenian, Sarkis Izmirlian, recently purchased the Wyndham Nassau Resort & Crystal Palace Casino, the Radisson Hotel, and the Nassau Beach Hotel; and plans a large resort development on Cable Beach;
- Superclub Breezes Resort, owned by a Jamaican company;
- Sandals Royal Bahamian Resort, owned by a Jamaican company;
- The British Colonial (Hilton) Hotel and the Clarion Resort owned by RHK Capital, Inc. of Canada;
- Club Med Resorts on San Salvador owned by a European group;
- Comfort Suites on Paradise Island owned by a U.S. company;
- Island Outpost Resort at Compass Point, Nassau, Pink Sands Resort, Harbour Island, and Kamalamae Resort, Andros owned by a Jamaican company;
- Cable Bahamas, Ltd., established by a Canadian group;
- Sandypoint Development Co. Ltd., a housing subdivision owned by a British company;
- Roberts Isle, a housing subdivision owned by a U.S.

company;

-- Treasure Cove, a housing subdivision, owned by a U.S. company;

-- Commonwealth Brewery Ltd (Heineken), a Dutch-Bahamian company;

-- Bacardi Company Ltd., a Bermuda-based company;

-- The Container Port facility, airport and three beachfront hotels in Freeport were acquired in 1997 by Hong Kong-based Hutchison Whampoa;

-- Freeport Power, an affiliate of Mirant, based in Atlanta;

-- The Caribbean Marine Research Center, operated by The Perry Institute for Marine Science, an American firm;

-- Freeport/Lucaya marina village developed recently by European investors;

-- Polymers International, Ltd., a subsidiary of Dart Container, which produces styrofoam pellets at a plant in Freeport, owned by a former U.S. citizen (formally renounced his citizenship, probably stateless now);

-- Morton Bahamas Ltd. (Salt), owned by a U.S. company;

-- Gorda Cay, renamed Castaway Cay, purchased and developed by Disney Corp. for its cruise ship operations;

-- Half Moon Cay, owned by U.S. company Holland America Cruise Lines;

-- A tropical fish farm operated on Walker's Cay by Aqualife, Ltd., a U.S. company;

-- Princess Cay, a cruise ship landing facility near Eleuthera Island, owned by Landquest, a U.S. company;

-- Four Seasons Resort Development on Exuma, owned by a U.S. Company;

-- Freeport Ship Care Facility, owned by the Lloyd Werft Ship Repair Company of Germany;

-- Our Lucaya Resort, a subsidiary of Hutchison Whampoa Group and Centex Rooney;

-- RIU Resort, Paradise Island, owned by a Spanish Company;

-- Winding Bay Resort, Abaco, owned by a British company;

-- AES American Oil Company, which owns Ocean Cay a mining facility to produce liquefied natural gas (upon Bahamian government approval);

-- Baker's Bay located on Guana Cay, Abaco is owned by the U.S. Discovery Land Company of San Francisco;

-- Bimini Bay Resort, owned by Floridian developer Geraldo Capo;

-- The Ginn development projected located on the Western end of Grand Bahama is owned by the Ginn Development Company of Orlando, Florida;

-- The Bahamas Film Studio/Gold Rock Creek Enterprises Ltd., located at East Grand Bahama is owned by Canadian Paul Quigley.

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